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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 393

CHRISTINE COLLINS, A. J. CUMMINS, YANCEY LEE CUMMINS AND EDWARD J. MILLER,

Petitioners,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR

REPLY BY PETITIONERS TO MEMORANDUM FILED BY RESPONDENT

JOHN K. SKAGGS,
ALLEN P. DODD, SR.,
Louisville, Kentucky.
MAX O'RELL TRUITT,
MAC ASBILL,
Washington, D. C.,
Counsel for Petitioners.

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INSTANT PROCEEDING WILL NOT BE RENDERED MOOT IN ANY RESPECT BY DECISION OF EMERGENCY COURT OF APPEALS

Under Section 203(a) and (c) petitioners had the unqualified right to file their protest with respondent and he was under the mandatory duty to refer same to a Board of Review as requested in the protest, and as pro-

vided in Sections 35(b), 43 and 50 of Procedural Regulation No. 1. Petitioners have never had their protest considered by a Board of Review and respondent has never passed upon the merits of their protest. There can be no basis for depriving petitioners of their statutory rights.

Before any judgment was rendered in the *civil action*, still pending trial in Kentucky, petitioners did obtain an order of the District Court permitting them to file a complaint with the Emergency Court of Appeals and a complaint was thereafter filed covering some of the issues involved in the prior protest. Said complaint is now pending before the Emergency Court. Whether, under Section 204(e) of the Emergency Price Control Act, the District Court was authorized to issue its order until "after judgment" in that court is a question which has never been decided. Obviously, unless the District Court was authorized to issue its order "before" judgment in the civil action, the pending complaint in the Emergency Court of Appeals may be dismissed at any time for lack of jurisdiction.

At any rate, the complaint filed with the Emergency Court of Appeals upon authorization from the District Court acting under Section 204(e) cannot be any substitute for the unconditional rights of petitioners to have all the issues raised in their protest considered by a Board of Review and the merits thereof passed upon by respondent as provided for by Section 203(a) and (c). Should respondent hereafter decide the protest in favor of petitioners, a dismissal of the complaint in the Emergency Court of Appeals may well be in order. If respondent should decide the protest adversely to petitioners, they would have the right to file a complaint with the Emergency Court of Appeals and to have that court pass upon the merits of their protest based upon the evidence heretofore presented by petitioners to respondent in support of their protest.

Conclusion

It is respectfully submitted that the petition for writ of certiorari should be granted.

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September, 1945.